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DISTRICT II

July 6, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1554

U.S. Bank National Association v. Lonnie L. Koenig
(L.C. #2013CV961)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Lonnie L. Koenig appeals pro se from a judgment of foreclosure entered in favor of U.S. Bank National Association. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

Koenig obtained a home loan from First Franklin Financial Corp. and secured the debt with a mortgage on his residence. U.S. Bank filed original and amended foreclosure complaints

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

asserting that it held the note and mortgage pursuant to an assignment, that Koenig was in default, and that there remained a balance due on the loan. U.S. Bank filed a motion for summary judgment and the circuit court set a briefing schedule and hearing date on the motion. Koenig was briefly represented by counsel, who moved to withdraw in lieu of filing a timely response to summary judgment. At the originally scheduled motion hearing, the circuit court permitted counsel to withdraw and extended the time for Koenig to respond to the summary judgment motion. Koenig filed a pro se “Answer and Objection to Amended Pleading” together with the affidavit of Chad D. Elrod, a purported expert witness. Koenig’s submission did not challenge the existence of his default or the amount owing on the loan, but instead objected to the subject matter jurisdiction of the court and U.S. Bank’s standing to proceed.

At the adjourned hearing on summary judgment, the circuit court determined that U.S. Bank’s motion together with its supporting papers established a prima facie case for summary judgment. Turning to Koenig’s responsive pleading and attachments, the circuit court observed that Koenig did not dispute that he was in default, but instead alleged “that the Plaintiff is not the holder of the note and mortgage.” The court determined that Koenig’s submissions failed to establish any disputed material facts or undisputed facts from which reasonable inferences could be drawn that would entitle Koenig to a trial,² and granted summary judgment in U.S. Bank’s favor.

² The circuit court rejected the notion that Elrod’s affidavit was sufficient to defeat summary judgment, finding “there’s no evidence that Mr. Elrod is an expert qualified to give an opinion as to the validity of the assignment of a mortgage,” and, additionally, that Elrod’s conclusion as to the mortgage’s validity “simply is not true.”

On appeal, Koenig contends that the circuit court lacked subject matter jurisdiction to hear U.S. Bank's summary judgment motion and renews his argument that U.S. Bank lacked standing to enforce the note and mortgage. We review a circuit court's decision to grant summary judgment de novo, applying the same methodology as the circuit court. *Fifer v. Dix*, 2000 WI App 66, ¶5, 234 Wis. 2d 117, 608 N.W.2d 740. Summary judgment is proper when "there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.*

We first reject Koenig's assertion that the circuit court lacked competency to proceed because it had a duty but failed "to prove, on the record, that it had [subject matter] jurisdiction." Quite simply, the cases in Koenig's brief do not stand for the proposition that a state circuit court is required to prove its own jurisdiction. We similarly reject Koenig's contention that U.S. Bank's motion for summary judgment was "void[ed]" by its subsequently filed, amended complaint. Koenig offers no authority to support his position and we will not consider it further. *See State v. Shaffer*, 96 Wis. 2d 531, 545-46, n.3, 292 N.W.2d 370 (Ct. App. 1980).

We conclude that the circuit court properly granted summary judgment in U.S. Bank's favor. It is undisputed that Koenig owed a debt pursuant to a note secured by a mortgage, and that he defaulted on the loan for which there remains due and owing a large balance. Contrary to Koenig's assertion, U.S. Bank established itself as the holder of the original note and therefore its entitlement to enforce the note and mortgage. Copies of the original note and mortgage were submitted as part of the motion for summary judgment, along with counsel's affidavit averring that on behalf of U.S. Bank, said documents were currently in his firm's physical possession, that he had presented the original note and mortgage to Koenig and his attorney for inspection, and that he would make the originals available to the court. At the summary judgment hearing,

counsel followed through on this attestation and informed the court that the original note and mortgage were in his possession and available for inspection.

That the mortgage was assigned to U.S. Bank by the Mortgage Electronic Registration Systems, Inc. (MERS) rather than by First Franklin is of no import. Though Koenig's argument is convoluted, our answer is simple; as the note's holder, U.S. Bank also holds the mortgage. *Dow Family, LLC v. PHH Mortg. Corp.*, 2014 WI 56, ¶¶5-7, 30, 33, 47, 354 Wis. 2d 796, 848 N.W.2d 728, *aff'g* 2013 WI App 114, 350 Wis. 2d 411, 838 N.W.2d 119 (pursuant to WIS. STAT. § 409.203(7), when a note is transferred or assigned, the equitable interests in the mortgage follow). U.S. Bank established its right to enforce the note and, under the doctrine of equitable assignment, the mortgage.³

Finally, Koenig's assertion that the circuit court improperly granted summary judgment "without hearing" is without merit. No further hearing was required. *See* WIS. STAT. § 802.08(2). To the extent Koenig complains that the circuit court "dismissed [his] claims without hearing," he is incorrect; Koenig never pled any counterclaims against U.S. Bank.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

³ Though it appears that U.S. Bank did prove a valid assignment of mortgage, because the nature of Koenig's challenge is unclear, we choose to invoke the doctrine of equitable assignment under which U.S. Bank need not prove a valid written assignment of mortgage.